

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE EASTERN DISTRICT OF WISCONSIN  
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4                                    )  
5    UNITED STATES OF AMERICA and the                                    )  
6    STATE OF WISCONSIN.                                    )  
7                                    )

8                    Plaintiffs,                                    )

9                                    )                    Civil Action No. 1:10-cv-910  
10                    v.                                    )  
11                                    )

12    NCR CORPORATION, et al                                    )  
13                                    )

14                    Defendants.                                    )  
15                                    )  
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17                                    **DECLARATION OF DR. TIMOTHY K. NENNINGER**  
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19                    I, Timothy Nenninger, declare as follows:

- 20    1.            I am presently employed as Chief of the Textual Records Reference Staff in the Textual  
21                   Archives Services Division, NARA, College Park, Maryland, USA and have been so  
22                   employed since 2006.  
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25    2.            The information provided in this declaration is based on my personal knowledge of the  
26                   facts set out herein and my 42 years of service with NARA, or on information that has  
27                   been reported to me by NARA staff in the course of my official duties.  
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- 1 3. I was awarded a Bachelors Degree by Lake Forest College in 1966, a Masters Degree in  
2 American History by the University of Wisconsin-Madison in 1968. and a Doctorate in  
3 American History by the same institution in 1974.
- 4
- 5 4. I commenced employment at the U. S. National Archives in 1970. From 1970 to 1980 I  
6 was a reference and project archivist for military records. In 1981 I served as an archivist  
7 with the Federal Bureau of Investigation-National Archives Records Appraisal Task  
8 Force. In 1982 I again worked as a reference archivist for military records and later  
9 served as the Assistant Chief for the Navy and Old Army Records Branch from 1983-  
10 1985 and Chief of the Military Projects Branch from 1985-1987. From 1987-1988 I was  
11 the John F. Morrison Professor of Military History at the US Army Command and  
12 General Staff College in Fort Leavenworth, Kansas. In 1988 I returned to the National  
13 Archives as Supervisory Archivist with the Archival Allocation and Records Evaluation  
14 Staff, a position I held through 1993. In 1994 I served as Chief of the Military Reference  
15 Branch at the National Archives. From 1995-1997 I worked as an Analyst for the World  
16 War II Working Group of the Joint US-Russia Commission on POWs/MIAs. Following  
17 a major reorganization, in 1998 I became Chief of Modern Military Records in the  
18 Textual Archives Services Division, National Archives at College Park.
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- 24 5. The National Archives is the depository of the permanently valuable historical records  
25 and documentation of the Federal Government of the United States of America. NARA  
26 was created by Congress to maintain the archives of the United States and to provide  
27 guidance on the management of federal agency records. Currently NARA operates 27  
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1 facilities, of which 14 are regional archives and 17 are federal record centers. At last  
2 estimate, these various facilities house about 4 million cubic feet<sup>1</sup> of paper records from  
3 former and current agencies of the United States government. The regional archives  
4 house permanently valuable records of the US Government that have been accessioned  
5 into the National Archives and which are the legal responsibility of NARA: less than 3%  
6 of all records created by agencies of the Federal government become permanent archival  
7 records. The federal record centers, while administered by NARA, house records still in  
8 the legal custody of the creating federal agency; most of these records eventually will be  
9 destroyed according to records schedules approved by NARA and the creating agency.  
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- 13 6. The National Archives is open to the public, researchers and other persons and agencies  
14 having an interest in examining the material therein. Members of the public and other  
15 persons who desire to review documents need only register with NARA and receive a  
16 research card. Persons who have received a research card, whether members of the  
17 public or federal employees, are entitled to the same level of assistance from staff  
18 archivists. This includes the representatives of federal agencies that may have created the  
19 records many years ago. In addition, there is no priority access granted to individuals  
20 who are members of the United States government: all persons interested in reviewing  
21 located records must wait in designated research areas and request that NARA employees  
22 retrieve the records from the appropriate storage locations. Records normally are  
23 delivered to researchers on library-type carts which can hold up to 24 boxes of records,  
24 each box containing ca. 1200 to 1500 pages.  
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28 <sup>1</sup> Each cubic foot is estimated to contain about 2,500 pages.

1  
2 7. I am familiar with the system and procedures within NARA and documents held by it.

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4 8. The National Archives II (Archives II), located in College Park, Maryland, maintains  
5 accessioned permanent headquarters-type records of the U.S. Army Corps of Engineers  
6 ("Corps") dating from approximately World War I toward the present; earlier (e.g., 19<sup>th</sup>  
7 century) Corps records are housed in the National Archives Building in Washington,  
8 D.C. (Archives I). Archives II also maintains a large collection, about 11,000 cubic feet,  
9 of publicly available maps and drawings created by the Corps; some of these maps and  
10 drawings may include records from District Offices in and around the Great Lakes.  
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13  
14 9. The permanent records of the Corps at Archives II are allocated to Record Group 77  
15 ("RG 77"), arranged in chronological blocks ("record series") by creating office or  
16 activity. Because NARA's regional archival facilities accession records from agency  
17 offices that operate in distinct geographical locations, Corps of Engineer district records  
18 relating to activity on the Fox River and Green Bay, Wisconsin would primarily be  
19 located at the NARA archival facility in Chicago, Illinois. Archives II does hold ca.  
20 14,600 cubic feet of Corps headquarters records, dating from the period of World War I  
21 toward the present. Most of the Corps records here at Archives II are at least 30 years  
22 old.  
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26 10. Because of the way our holdings are arranged and described, it is usually unnecessary to  
27 review *all* of the records in a particular record group to perform reasonable searches for  
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responsive records. As a general matter, NARA staff and public researchers rely on a variety of "finding aids" to determine the contents of record groups, record series, boxes, and folders among our holdings. These finding aids, both hard copy and electronic, come from two sources: (i) generated by the agency that created the records, for internal agency use when initially maintaining the records, or when preparing the records for transfer to NARA (normally Standard forms ("SF") such as 258s), or (ii) created by NARA staff in the intervening years to provide general or specific information about the content of bodies of records (general or subject specific guides, inventories of entire record groups, box and folder content lists, and the Archival Research Catalogue (ARC)).

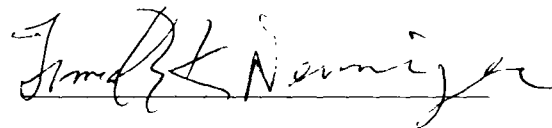
11. Hard copy finding aids related to RG 77 at Archives II are currently housed in four binders and four boxes, numbering approximately 4,000 pages. So far as I am aware, to the extent NARA staff have "subject matter expertise" with respect to Corps records, that expertise is based on existing finding aids that are open and available to the public to use as an aid to their research. Conversely, given the age and range of the Corps records available at Archives II, it is doubtful current employees of the Corps would have had any personal involvement or familiarity with the transfer of these archival records to the National Archives.

12. In addition to the more traditional finding aids described above, we have the capacity to print out record group reports of data based on our Holdings Management System ("HMS") upon request. HMS provides a global overview of archival records in a particular record group, including specific stack locations for each record series; essential

1 information for a researcher wanting to order records. Although an HMS listing report  
2 provides only a general identification of the content in a specific record series, it can be  
3 used as a tool that, in conjunction with traditional finding aids, enables a researcher to  
4 search for responsive records more effectively. My understanding is that pursuant to a  
5 request from DOJ, a member of my staff did create such an HMS report for RG 77.  
6 scanned it in, and provided it to DOJ in August of 2012.  
7

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9 I declare under penalty of perjury that the foregoing is true and correct, to the best of my  
10 knowledge and belief.  
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12 Executed this <sup>th</sup>14 day of September, 2012.  
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17 Timothy K. Nenninger

18 Chief Textual Records Reference Staff, Archives II  
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## CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing Declaration to be served on counsel of record via e-mail to:

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